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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Commission's Review of)
Chapters 4901:1-17 and 4901:1-18 and Rules)
4901:1-5-07, 4901:1-10-22, 4901:1-13-11,)
4901:1-15-17, 4901:1-21-14, and 4901:1-29-12)
of the Ohio Administrative Code.)

Case No. 08-723-AU-ORD

**REPLY OF OHIO GAS COMPANY TO
MEMORANDA CONTRA OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND
OHIO PARTNERS FOR AFFORDABLE ENERGY TO
MOTION FOR WAIVER OF THE OHIO GAS COMPANY**

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I. BACKGROUND

The Commission issued its Finding and Order in this proceeding adopting amended rules in Chapters 4901:1-17 and 4901:1-18, Ohio Administrative Code ("O.A.C.") on December 17, 2008, and its Entry on Rehearing on April 1, 2009. In its Entry on Rehearing, the Commission ordered that the "utilities shall immediately begin the programming changes necessitated by the new gas PIPP program and changes to the provisions of Chapters 17 and 18."¹ At the same time, the Commission explicitly addressed the circumstances of Ohio Gas Company ("Ohio Gas" or "Company"):

The Commission believes that the mid-size gas companies (fewer than 75,000 customers) like OGC should continue to offer PIPP. We recognize, however, that the new arrearage crediting and graduate PIPP programs may present issues unique to the mid-size companies, since they have relatively fewer PIPP customers and fewer non-PIPP customers over which to spread the costs of these new programs. Therefore, we are willing to consider a company specific request for a waiver of the arrearage crediting and graduate

¹ Entry on Rehearing at 41.

PIPP programs where the costs to non-PIPP customers outweigh the benefits and where an alternative proposal might meet the spirit of the rules. Thus, should OGC have a specific concern OGC should make a company specific request in a separate filing for our consideration.²

In keeping with the Commission's intent that the necessary preparation for implementation of its new rules not be delayed, and its specific invitation to Ohio Gas to seek necessary waivers from its new Graduate PIPP and arrearage crediting rules (and any related bill format modifications that might ultimately be required), Ohio Gas filed its Motion for Waiver on May 27, 2009 ("Motion for Waiver"). On June 11, 2009, the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") each filed a Memorandum Contra to Ohio Gas' Motion for Waiver.

While Ohio Gas anticipated that there might be some opposition to its waiver request, it is surprised at the negative tone and assertions contained in OCC's document.³ For example, OCC suggests that Ohio Gas misrepresents the manual intervention required to accommodate the new arrearage crediting requirement and characterizes its billing system as antiquated simply because routine reprogramming cannot apply the new arrearage credits without massive upgrades at significant cost to benefit a small number of customers.

OCC's discussion of Ohio Gas' request and apparent attitude about the company suggests that OCC knows very little about Ohio Gas and its record of serving its customers. For this reason Ohio Gas believes it is necessary to briefly set the record straight.

² *Id.* at 45.

³ OPAE's opposition to Ohio Gas' request is limited to one issue for which OPAE makes an untenable proposal. This issue will be addressed below.

Ohio Gas' physical system is operated to the highest of safety and physical quality standards. A review of historical financial audits in Ohio Gas' GCR proceedings shows that Ohio Gas routinely experiences much less than 1% line loss and more frequently than not achieves line loss less than 0.5%. Ohio Gas has always owned the customer service lines in its service territory and has no "prone-to failure" risers in its system. That means that there will be no rider sought to replace prone-to-fail risers and transfer customer service ownership to the company. Parenthetically, there will be no proposal for a huge main line replacement program since Ohio Gas has an insignificant amount of cast iron and unprotected pipe in its distribution system. In terms of its "antiquated" technology, Ohio Gas' billing system accommodates all existing regulatory requirements, but for those addressed in the instant waiver request, and Ohio Gas internally funded a \$90,000 upgrade to improve its customer billing and records system in 2007 for which it neither sought nor received cost recovery from customers.

Ohio Gas' customer service record is excellent. All of Ohio Gas customer service representatives are housed in the company's service territory in Ohio and are dedicated to serving only customers of Ohio Gas regarding matters related to only services provided by Ohio Gas. Ohio Gas officials meet personally with the communities it serves at least once a year. Ohio Gas routinely contacts customers (as discussed below) to address matters to improve service. Furthermore, there has been no customer complaint filed against Ohio Gas at the Commission since 1981.

Lastly, Ohio Gas' management of the fixed costs (distribution rates) of providing its service is exemplary. The first block rate of the base rates charged by Ohio Gas today, including all riders approved by the Commission since the rates were set, is less

than that approved in Ohio Gas' most recent rate case decided on November 26, 1985. In fact, when Ohio Gas recently exited the merchant function, it gratuitously sought and obtained approval for a gas storage credit rider to reduce costs to customers since it was no longer purchasing gas on their behalf.

Ohio Gas' record of safe and reliable service to its customers at reasonable costs is simply excellent. Unfounded accusations that it misrepresents the activities required to serve its customers or its commitment to the quality of its assets employed to provide that service do not further this discussion. As for the specifics of OCC's argument against the requested waiver, Ohio Gas' reply follows.

II. DISCUSSION

A. Response to OCC's Memorandum Contra

OCC's Memorandum Contra mischaracterizes Ohio Gas' Motion for Waiver and provides the Commission with only part of the story in most of its assertions. For the reasons below, the Commission should find that good cause exists to grant Ohio Gas' request.⁴

OCC first notes that Ohio Gas filed its waiver request before the Commission ever established an effective date for the rules, saying that apparently Ohio Gas already determined that it could not comply with the rule.⁵ It is prudent for Ohio Gas to request a waiver early in the 08-723 rulemaking compliance timeframe in order to maximize efficiencies in implementing the changes that Ohio Gas can process in time to meet the November 1, 2010 effective date of the recently-modified rules. Surely, had Ohio Gas

⁴ Ohio Gas' Reply generally addresses OCC's Memorandum Contra in the chronological order in which arguments were made by OCC.

⁵ OCC Memorandum Contra at 2.

waited until a later date, OCC would have criticized Ohio Gas for waiting so long. Ohio Gas should not be criticized for a prudent business and regulatory decision that will increase Ohio Gas' efficiency in complying with the rules from which it is not seeking a waiver. The Commission should not deny Ohio Gas' Motion for Waiver on this basis.

OCC also observes that Ohio Gas is merely arguing the same points that Ohio Gas argued during the 08-723 rulemaking.⁶ The fact that Ohio Gas cannot comply with the rules with its current billing technology was exactly the point Ohio Gas sought to convey during the rulemaking. Ohio Gas alerted the Commission of its technological limitations⁷ and has complied with the Commission's suggestion that Ohio Gas make a company-specific request for a waiver where the costs to non-PIPP customers outweigh the benefits. The facts have not changed. While Ohio Gas believes its computer system could be upgraded at enormous expense, Ohio Gas' billing system, as it is presently built, cannot be reprogrammed to accommodate the adopted rules and an estimated two hours per day of manual intervention by an Ohio Gas employee would be required to implement the adopted rules. Therefore, OCC should not be surprised that Ohio Gas is making the same points and arguments as in the 08-723 rulemaking. OCC's point is not well-made, and the Commission should not deny Ohio Gas' waiver request on this basis.

OCC next questions Ohio Gas' estimates for the programming hours and company resources to implement the adopted rules.⁸ OCC compares the estimates contained in Ohio Gas' initial comments to the estimates Ohio Gas conveyed in this

⁶ *Id.*

⁷ Application for Rehearing of Ohio Gas Company at 4 (of Memorandum in Support).

⁸ OCC Memorandum Contra at 2.

request. The time estimates are different because they are estimates of the time necessary to implement two different sets of rules. The Commission modified several rules during the rehearing process and the different estimates reflect those changes, and the Commission should not deny Ohio Gas' waiver request on this basis.

OCC also questions the Company's determination that manual intervention for arrearage crediting alone will occupy two hours per day of one of its employees.⁹ OCC has not presented any evidence to support accusations that Ohio Gas has miscalculated the resources necessary to manually intervene and provides no reason to deny Ohio Gas' waiver request on this basis.

OCC also challenges Ohio Gas' assertion that the costs of implementation dwarf the possible benefits for consumers.¹⁰ OCC's calculations of costs versus benefits are incorrect at best. OCC incorrectly assumes that the entire arrearage currently owed to Ohio Gas would be credited through monthly arrearage credits. The Commission noted that non-PIPP customers of the other large investor-owned electric and gas utility companies make timely payments only 47% of the time.¹¹ OCC's failure to account for this fact improperly skews its cost/benefit analysis. The Commission should not rely on a straight-forward numerical analysis to calculate whether the costs outweigh the benefits to Ohio Gas implementing the arrearage crediting and Graduate PIPP portions of the rules. Good cause exists to grant Ohio Gas' waiver request and the Commission should not deny Ohio Gas' waiver request on this basis.

⁹ *Id.* at 3, FN 10. "This unsupported assertion lacks any credibility."

¹⁰ *Id.* at 3.

¹¹ Finding and Order at 63.

OCC next tries to rebut the Company's assertion that the Commission must balance the interest of PIPP customers that benefit from the program and all other customers who pay for the program, noting that even PIPP customers pay the PIPP rider.¹² It is not true that PIPP customers pay the PIPP rider; PIPP customers are billed the PIPP rider, but pay only a fraction of their monthly household income toward the actual bill amount. The fact that PIPP customers are billed the PIPP rider does not erase the Commission's duty to balance the costs that the PIPP program imposes on non-PIPP customers who actually pay the entire billed amount, including the PIPP rider.¹³ OCC's point is not well-made, and the Commission should not deny Ohio Gas' waiver request on this basis.

OCC also attempts to discredit Ohio Gas' analysis of its PIPP customers as of May 2009. But, OCC incorrectly cites the Company's Motion for Waiver and omits an important qualifier that supports the Company's point. OCC uses the fact that "only 77 PIPP customers have paid their bills on time in the last 12 months" to demonstrate the importance of applying arrearage credits on a monthly basis.¹⁴ In fact, Ohio Gas observed that only 77 PIPP customers have paid their bills on time at least nine times in the last 12 months.¹⁵ The Commission implemented a monthly arrearage crediting program in the hopes that it would be another incentive to break the cycle of seasonal disconnection and facilitate elimination of arrearages.¹⁶ The costs of the information technology measures as well as the required manual intervention previously described

¹² Memorandum Contra at 3.

¹³ See Finding and Order at 56, 61-62.

¹⁴ OCC Memorandum Contra at 4.

¹⁵ Motion for Waiver at 7.

¹⁶ Finding and Order at 64.

by Ohio Gas far outweigh the benefits that would accrue to the relatively few PIPP customers who continually make on-time payments and would receive an appreciable arrearage reduction. The number of customers who move on and off the PIPP program intermittently as the seasons change,¹⁷ as well as the frequency with which PIPP customers move, further diminishes the impact arrearage crediting would have regardless of whether it is applied to timely payments on a monthly basis. OCC's point is not well-made, and the Commission should not deny Ohio Gas' waiver request on this basis.

Also of note, OCC raises the question of why customers are on the PIPP program and have credit balances.¹⁸ OCC's comment ignores the fact that the PIPP program is an entitlement program – if a customer meets the income guidelines that customer may enroll in the program, regardless of whether there is a credit on the account. Credits ordinarily appear on PIPP customers' accounts because of Home Energy Assistance Program ("HEAP") payments or when a customer's PIPP payment is greater than the customer's budget bill payment would be. Ohio Gas reaches out to its PIPP customers and will continue to contact PIPP customers with credit balances to discuss payment plans that are more advantageous than the PIPP program, such as budget bills, for that particular customer. However, often times these customers are not willing to leave the PIPP program despite the fact that another payment program might

¹⁷ As the Commission itself recognized, a significant number of PIPP customers utilize the Commission's ordinary winter disconnect order to receive free natural gas service after paying the initial \$175.00 and then drop service entirely for the summer months, only to re-emerge to use the winter disconnect order again once summer ends. Finding and Order at 64. Ohio Gas estimates approximately 1/3 of its PIPP customers annually engage in this pattern of behavior.

¹⁸ OCC Memorandum Contra at 4, FN 15
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be more beneficial to them. The Commission should not deny Ohio Gas' waiver request on this basis.

Additionally, OCC criticizes the "astounding" number of disconnection notices issued by Ohio Gas in January 2009.¹⁹ OCC also notes that Ohio Gas had the technical wherewithal to manage 374 deposits on PIPP accounts.²⁰ OCC again mischaracterizes Ohio Gas' Motion for Waiver. As noted above, Ohio Gas' billing system is capable of accommodating all existing regulatory requirements. For example, disconnection notices are generated automatically by the Company's billing system when a customer is 60 days past due, consistent with the Commission's rules.²¹ However, the rule changes promulgated in the 08-723 rulemaking were significant. The fact that Ohio Gas' billing system is capable of meeting existing requirements is irrelevant to the fact that it cannot be reprogrammed to accommodate the rules from which Ohio Gas seeks a waiver. Ohio Gas' computer system generates the notices in accordance with the Commission's rules, and the Commission should not deny Ohio Gas' waiver request on this basis.

OCC goes on to observe that the Graduate PIPP program is open to be used both by customers who are not income eligible for the PIPP program as well as those that still qualify for PIPP but voluntarily leave the PIPP program and that the 10

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ It is worth noting that despite the disconnection notices generated, besides the very small number of customers who committed fraud against the Company or who voluntarily requested a disconnection, Ohio Gas did not disconnect anyone in January due to the informal disconnection moratorium requested by the Commission. Even without the moratorium, Ohio Gas ordinarily makes significant efforts towards resolution of the problem before disconnecting a customer.

customers who left the PIPP program were likely income ineligible.²² An examination of OCC's line of reasoning supports the point that Ohio Gas made in its Application for Rehearing and that still applies.²³ The payment for a customer in the Graduate PIPP program will be greater than the payment amount for a customer enrolled in the ordinary PIPP program and there is no incentive, except for the arrearage crediting program, for a customer to voluntarily leave the regular PIPP program. Ohio Gas continues to believe the number of customers choosing to voluntarily leave the ordinary PIPP program in order to reduce arrearages more quickly would be miniscule and that a similar number of customers (only 10) will leave the PIPP program due to income ineligibility in future years, especially given Ohio's current economic condition. As referenced above, it has been the Company's experience that customers are going to leave the PIPP program only when forced to do so, even if doing so would be advantageous for them. OCC's point is not well-made and the Commission should not deny Ohio Gas' waiver request on this basis.

Finally, OCC cites to the recommendations of Governor Ted Strickland's anti-poverty task force as a reason not to grant the Company's Motion for Waiver.²⁴ Granting the Company's waiver request would not deny any customers access to the PIPP program. Ohio Gas customers on the PIPP program would simply not receive the new promulgated arrearage crediting program (see the alternative proposal below) or be eligible for the Graduate PIPP program (which Ohio Gas already demonstrated would be a very small number of customers). OCC fails to address the points that Ohio

²² OCC Memorandum Contra at 4-5.

²³ Application for Rehearing of Ohio Gas Company at 5 (of Memorandum in Support).

²⁴ OCC Memorandum Contra at 5.

Gas made about Governor Strickland's Executive Order entitled Implementing Common Sense Business Regulation, the Regulatory Reform Task Force Report, pending legislation related to regulatory relief for small businesses,²⁵ and Commission precedent, all of which lend significant support to Ohio Gas' waiver request.²⁶ OCC's point is not well-made, and the Commission should not deny Ohio Gas' waiver request on this basis.

B. Alternative proposal that meets the spirit of the rules

Both OCC and OPAE underscore Ohio Gas' lack of "an alternative proposal [that] might meet the spirit of the rules."²⁷ To the contrary, Ohio Gas did indeed propose an alternative to the newly promulgated rules by seeking authority to continue providing the current PIPP program.

OCC does not make its own alternative proposal, but OPAE proposes an alternative to eliminate all arrearages for PIPP participants as of November 1, 2009 and, going forward, treat the PIPP payment as the entire bill, substituting the PIPP amount for the actual bill.²⁸ Ohio Gas would then treat customers who fail to pay the PIPP amount like any other customers, requiring payment plans or terminating customers as appropriate.²⁹ OPAE's proposal most certainly eliminates any incentive that PIPP

²⁵ Of note, Senate Bill 3, a pending piece of legislation regarding regulatory relief for small businesses, was amended into the biennial budget bill (House Bill 1 or "HB 1") by the Ohio Senate and is pending in the conference committee on HB 1. See Motion for Waiver at 11-12.

²⁶ See Motion for Waiver at 10-12.

²⁷ OCC Memorandum Contra at 5; OPAE Memorandum Contra at 2-3.

²⁸ OPAE Memorandum Contra at 2.

²⁹ *Id.* at 2-3.

customers would have to actually pay their bills or remain on the PIPP program during the summer months³⁰ and for that reason alone is untenable.

After further analysis of the operational requirements associated with various arrearage crediting models, Ohio Gas has developed an additional alternative for arrearage crediting of PIPP customers for Commission consideration. As previously demonstrated, the Graduate PIPP program will likely be used by very few customers, and Ohio Gas continues to request complete relief from the Commission's rules related to the Graduate PIPP program.³¹

As for arrearage crediting for PIPP customers, Ohio Gas proposes an arrearage crediting program whereby Ohio Gas would manually calculate and apply a complete arrearage credit for a PIPP customer that:

- has been an active PIPP customer for the previous 12-month period of August 1 through July 31;
- has been an active PIPP customer on the same account during the August 1 through July 31 period; and
- has made at least 9 payments during the 12-month period that equal the total amount due under that customer's PIPP program payment arrangement for the same 12-month period.³²

Ohio Gas would do the arrearage crediting only once per year after the end of the July billing period and would apply the total arrearage credit on the September monthly bill. The proposed alternative arrearage crediting program would be done *via* manual intervention and can be accomplished by utilizing a reasonable amount of resources.

³⁰ See Finding and Order at 69-72.

³¹ In addition to a waiver of Rule 4901:18-16, O.A.C., Ohio Gas also requests a waiver of Rule 4901:1-18-13(A)(2), O.A.C., regarding the calculation of Graduate PIPP payment amounts, in order to effectuate a complete waiver from the Graduate PIPP provisions in Chapter 4901:1-18, O.A.C.

³² Ohio Gas recognizes the Commission's concern that it is unrealistic to expect customers to make 12 consecutive timely payments in order to receive an arrearage credit and proposes this compromise in the spirit of trying to incentivize customers to take advantage of its alternative arrearage crediting program. See Finding and Order at 63.
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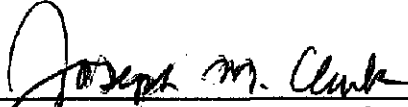
Ohio Gas would also commit to provide notice of the arrearage crediting program through a bill insert in each customer's June and July bills. The credit would then be reflected on the "Credit Adjustment" portion of the customer's bill.

Ohio Gas would implement the remaining provisions of the PIPP rules, as adopted by the Commission, by November 1, 2010.

III. CONCLUSION

Ohio Gas respectfully requests the Commission grant its Motion for Waiver for the reasons set forth in the Motion for Waiver, Memorandum in Support, and above.

Respectfully submitted,

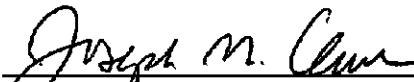


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply of Ohio Gas Company to Memoranda Contra of the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy to Motion for Waiver of The Ohio Gas Company* was served upon the following parties of record this 18th day of June, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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